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Supreme Court of the United States

OCTOBER TERM, 1944

No.

ROBERT L. EMERY, ET ALS.

versus

ORLEANS LEVEE BOARD

PETITION FOR WRITS OF CERTIORARI AND REVIEW TO THE SUPREME COURT OF LOUISIANA AND BRIEFS IN SUPPORT THEREOF.

The petition for writs of Certiorari and Review of

(1) Robert L. Emery.

(2) Robert L. Emery Jr.

(3) Alice Josephine Miller, a femme sole, all residents and citizens of the City of New Orleans, La., and

(4) Of the El Paso National Bank, the duly appointed and qualified executor of James M. Baker, deceased, with respect represents:

That on August 25, 1939, they filed suit before the Civil District Court for the Parish of Orleans, La., under ***No. 231,962*** of the docket of that Court against the Orleans Levee Board, a Louisiana Corporation, domiciled in New Orleans, La., for the recovery of a tract of land situated in the Parish of Plaquemines, La., embracing 34.68 acres, averring therein that the value of such property was in excess of $3,000.00 and which averment of value was not denied by the defendant, as required by the statute of Louisiana;

That in said proceedings it was set forth that the petitioners had a full title to the property involved, which title had been fully restored to the plaintiffs by an act of redemption from the State of Louisiana made pursuant to the provisions of Act No. 47 of 1938 and being the full owners of the property, they asked that their title thereto be recognized and that they be placed in possession thereof;

They further set forth that the defendant, acting under the provisions of Act No. 99 of 1924 of the Louisiana Legislature, had, without ***purchase, donation or appropriation,*** or a formal act of sale, donation, or appropriation, taken possession and claimed the ownership of their property and that they were thereby deprived thereof in violation of the 5th and 14th amendments of the Constitution of the United States although Act No. 99 of 1924 especially provided that the defendant could not take possession of property

required for the spillway therein authorized by that act except by acquiring all private property embraced within the area "by purchase, donation or expropriation".

Petitioners show that the defendant, after pleading certain exceptions, answered the demand of the plaintiff but in such answer it set up no title to the property involved.

They show that on the first trial of the case judgment was rendered in their favor because of failure to set up title, but which judgment was reversed on appeal to the Supreme Court of the State of Louisiana, because of defective pleading and the cause was remanded to the Lower Court, the opinion on this appeal being officially reported in ***200 La., page 285,*** to which special reference is here made as if embodied herein.

They show that on the remand the defendant yet failed to set up any title to the property and they show that on the second trial, judgment was rendered in their favor recognizing their ownership of the property involved, the written opinion of the trial Court being copied in full in accompanying certified transcript of the record.

Petitioners further show that the defendant prosecuted an appeal from the judgment of the trial Court to the Court of Appeal of the Parish of Orleans, a Court composed of three judges, whereupon petitioners moved to dismiss said appeal because the value of the property involved exceeded in value $2,000.00, the maximum jurisdictional limit of that Court, but the

motion to dismiss was denied by the Court of Appeal, the opinion thereon being officially reported in ***11th (2nd) Sou. Reporter, page 652*** to which special reference is hereby made as if embodied herein.

Petitioners further show that the Court of Appeal finally decided the cause by dismissing the plaintiff's suit, one Judge dissenting, the original, concurring opinion and dissenting opinion of the three Judges of the Court of Appeal being officially reported in ***15th, (2nd) Sou. Reporter, page 783,*** to which special reference is here made as if fully embodied herein;

Petitioners further show that they unsuccessfully endeavored to obtain a rehearing, (a prequisite under Louisiana Law for obtaining a writ of Certiorari and Review from the Supreme Court of the State of Louisiana) and thereupon they petitioned the Supreme Court of Louisiana for writs of Certiorari and Review assigning some twenty errors in the opinion of the Court of Appeal amongst which was assignment 19, reading as follows:

"(19) The Court in its opinion failed to pass upon the constitutional questions expressly raised by the Plaintiff and which they requested to be done, all as set forth in Articles 5 and 6, of the first amended petition of the Plaintiff's.

Petitioners show that the Supreme Court of Louisiana granted the writs of Certiorari and Review thus applied for and in proceedings ***No. 37,452*** of the docket of that Court, the judgment of the Court of Appeals was affirmed, the Chief Justice of that Court dissenting, all as will more fully appear by reference to said

opinion, and dissenting opinion and opinion of the Court rendered on application for a rehearing, copied in full in the accompanying certified transcript of said record.

They show that an application for a rehearing was made to the Supreme Court of Louisiana, particularly stressing the fact that said Court had failed to pass on the Federal Question involved and they show that the Supreme Court of Louisiana on the 19th day of February, 1945, refused said application for a rehearing and therein specifically passed upon the Federal question involved denying that the Plaintiffs' rights under the 5th and 14th amendment of the United Constitution, had been impaired, all as will more fully appear by reference to the opinion of the Supreme Court of the State of Louisiana rendered on rehearing, copied in full in the accompanying certified transcript of the record in said case.

Now your petitioners aver that in reaching the conclusion it did, the Supreme Court of the State of Louisiana, deprived them of their property without due process of law in violation of the pleaded articles of the Constitution of the United States;

Petitioners show that under Louisiana Law, reinforced by the decisions of the highest courts of that state quoted in the supporting brief, a redemption from a tax adjudication restores the property to the former owner as if there had been no tax adjudication and they show that having become reinvested with full title to their property, that to deprive them thereof, without purchase or expropriation, constitutes a taking of their

property without due process of law in violation of the Federal Constitution;

Petitioners further show that under the Constitution of the State of Louisiana there is no forfeiture to the State for the nonpayment of taxes, for ***article 10, section 7 of the Constitution of Louisiana of 1921,*** provides:

"There shall be no forfeiture of property for non-payment of taxes," and in accordance therewith the legislature of the State of Louisiana by ***Act 161 of 1934*** has provided that as long as property adjudicated to the State for non-payment of taxes has not been disposed of by the State, pursuant to existing laws, that the owners have the right to redeem:

Petitioners further show that ***Act 99 of 1924,*** under which the defendant has appropriated to itself their property, without payment or expropriation, contains no provision authorizing the defendant to appropriate property within the spillway area which had been adjudicated to the State for Taxes.

They show that the State made no donation of any property so adjudicated or attempted to do so, nor could it do so, because ***article 4 of section 12 of the Constitution of the State of Louisiana of 1921*** provides:

> "The funds, credit, property or things of value of the State or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation ***public or private.***"

VII

They show that this defendant was a public corporation invested with certain powers under ***La. Act 99 of 1924,*** but was nowhere invested with the power or right to take possession and claim ownership of property in the spillway area which had been adjudicated to the State for taxes, and particularly where such property had been redeemed from the tax adjudication thereby restoring the owners to full ownership thereof:

Petitioners further show that the opinion of the Supreme Court of the State of Louisiana added to ***La. Act 99 of 1924*** words not embraced in the Act, thereby creating a title in the defendant, which is a clear violation of their constitutional rights.

In other words, our Supreme Court and Court of Appeal have interpreted Louisiana Act 99 of 1924 as a bill of sale translative of title without any formal transfer, something clearly in violation of the Constitutional articles of Louisiana and of the United States quoted herein.

They show that such words added to said act was judicial legislation, not permitted by law under the theory of interpretation and such interpretation was in clear disregard of the decisions of that Court cited in the supporting brief.

Petitioners further show that in order to deprive them of their property the opinion of the Supreme Court of Louisiana held that it was the intention of the legislature of the State of Louisiana to exclude from the provisions of ***act 47 of 1938,*** such lands as had been adjudicated to the State of Louisiana for non-payment

of taxes, but ***Act 47 of 1938*** said nothing of the sort, making no exemption whatever from the effect of that law and they show to thus create an exemption in a law, not named or made therein, was judicial legislation not permitted by law, and to permit same to stand will have the effect of depriving them of their property in violation of their rights guaranteed them under the Constitution of the United States.

Petitioners further show that the opinion of the Supreme Court of Louisiana, rendered in this cause, interpreted ***Act 99 of 1924***, under which the defendant claims, as making it the intention of the Louisiana Legislature to exclude from the requirements of that act all property in the spillway area which should be required by the defendant by purchase, donation or expropriation, such property which had been adjudicated to the State for non-payment of taxes, when the Act said nothing of the sort, was improper judicial legislation, which, if allowed to stand, would deprive them of their property without due process of law in violation of their rights accorded them by the Constitution of the United States and they show that in so judicially enacting by interpretation the terms of Act 99 of 1924 that that Court did so in disregard of its own decisions cited in the supporting briefs.

Petitioners further show that they annex hereto in the accompanying certified transcript of the record a duly certified copy of the opinion of the trial Court which, with the opinions rendered by the Supreme Court and the Court of Appeal, furnish this Court with a full insight to the question involved in this litigation and which disclose to the Court that petitioners have

been deprived thereby of their property for a public purpose without payment therefor, in violation of the Statutes of the State of Louisiana, the Constitution thereof, and the Constitution of the United States.

Petitioners further show that they have exhausted all of the legal rights accorded them under the laws of Louisiana without obtaining relief and to the end of protecting their rights guaranteed them under the Federal Constitution, they now bring this controversy before this Court.

Wherefore petitioners pray, because they have been deprived of their property in violation of the Constitution of the United States, that writs of Certiorari and Review may issue out and under the seal of this Honorable Court to the Supreme Court of Louisiana demanding that that Court do certify and send to this Court for review and determination on a day therein to be stated, a full and complete transcript of the record and all proceedings in the matter of ***R. L. Emery, et als. versus the Orleans Levee Board*** No. 37,452 of the docket of the Supreme Court of Louisiana and that this decree and judgment of said Court be finally reversed and that they be recognized as the joint owners of the property claimed by them in said proceedings and that your petitioners may have such relief in the premises as this Court may deem to be just and proper.

H. H. Talbot

T. Andrew Richardson

Of Counsel